

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JUAN GOMEZ VASQUEZ,

Plaintiff,

vs.

MAGGIE MILLER-STOUT,
HEWSON, RICHARSON, FOX,
HUGHES, ROLLINS, GREEN, and
STOCKWELL

Defendants.

NO. CV-13-114-JTR

ORDER ADOPTING REPORT AND
RECOMMENDATION AND
DISMISSING ACTION

1915(g)

BEFORE THE COURT is Plaintiff's undated First Amended Complaint, ECF No. 12, which the Court liberally construes as his Objections to the Report and Recommendation to Dismiss Complaint filed on August 26, 2013, ECF No. 11. Plaintiff, a prisoner currently housed at the Olympic Corrections Center in Forks, Washington, had not previously amended his complaint as directed in the Order filed June 21, 2013, ECF No. 9. He offers no explanation for this omission.

The Court has liberally reviewed Plaintiff's submission in the light most favorable to Plaintiff and finds that it fails to cure the deficiencies of the prior complaint, or to present any reasonable objections to the Report and Recommendation to Dismiss. Plaintiff asserts that on an unspecified date, Defendant Richarson conducted a minor infraction hearing, where he allegedly informed Plaintiff that he would not "get off on a 'fucking technicality' and that if (I) Plaintiff shit in his fucking pond (I) Plaintiff

1 wouldn't have nothing coming." Although highly unprofessional and offensive, the
2 alleged statements by Defendant Richarson, including a declaration that Plaintiff was "on
3 [his] shit list," are insufficient to state a plausible claim entitling Plaintiff to relief in this
4 Court.

5 Plaintiff states he was placed in administrative segregation the following day,
6 pending an investigation for allegedly making threats to staff. Plaintiff asserts that the
7 "documents making allegations against Plaintiff" did not provide adequate evidence of
8 threats. He avers Defendants Fox and Stockwell directed him to write a kite to
9 Defendant Rollins who was allegedly in charge of the investigation, as they claimed they
10 had no information. Plaintiff contends he wrote to Defendant Maggie Miller-Stout, who
11 allegedly failed to investigate the allegations. Plaintiff claims Defendant Green was
12 aware of Defendant Richarson's alleged misconduct, but refused to take action. Plaintiff
13 claims he was transferred to another institution and was seriously assaulted by another
14 inmate.

15 An inmate has no constitutionally guaranteed protection from being wrongly
16 accused of conduct; rather, he has a constitutional right not to be deprived of a protected
17 liberty interest without due process. *See Freeman v. Rideout*, 808 F.2d 949, 951 (2d
18 Cir.1986), *cert. denied*, 485 U.S. 982 (1988). Any due process claim regarding
19 Plaintiff's placement in Administrative Segregation and the alleged failure to provide
20 him with "evidence" to justify his placement, however, must fail. An inmate has "no
21 liberty interest in freedom from state action taken within the sentence imposed," *Sandin*
22 *v. Conner*, 515 U.S. 472, 480 (1995) (quotation omitted), and the Ninth Circuit
23 explicitly has found that administrative segregation falls within the terms of confinement
24 ordinarily contemplated by a sentence. *Toussaint v. McCarthy*, 801 F.2d 1080, 1091-92
25 (9th Cir. 1986).

26 Again, the existence of an administrative remedy process does not create any

1 substantive rights and mere dissatisfaction with the remedy process or its results cannot,
2 without more, support a claim for relief for violation of a constitutional right, *Ramirez v.*
3 *Galaza*, 334 F.3d 850, 860 (9th Cir. 2003); *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir.
4 1988). The failure of prison officials to respond to or process a particular grievance does
5 not violate the Constitution. *See Flick v. Alba*, 932 F.2d 728, 729 (8th Cir. 1991); *see*
6 *also Baltoski v. Pretorius*, 291 F.Supp.2d 807, 811 (N.D.Ind.2003) ("[t]he right to
7 petition the government for redress of grievances, however, does not guarantee a
8 favorable response, or indeed any response, from state officials"). Plaintiff's allegations
9 are insufficient to state a claim against Defendants Miller-Stout, Hewson, Fox, Hughes,
10 Rollins, Green or Stockwell for any alleged failure to investigate his claims.

11 Plaintiff indicates he was transferred to another institution and assaulted by
12 another inmate. He presents no facts showing the transfer on an unspecified date was
13 anything other than an administrative decision. *See McKune v. Lile*, 536 U.S. 24, 39
14 (2002)("It is well settled that the decision where to house inmates is at the core of prison
15 administrators' expertise."). To the extent Plaintiff may be attempting to assert he was
16 afforded insufficient protection resulting in harm inflicted by another inmate, *White v.*
17 *Roper*, 901 F.2d 1501, 1503-04 (9th Cir. 1990), he would need to present that claim in
18 the district in which it arose.

19 For the reasons set forth above, in the Report and Recommendation, and also in
20 the Order to Amend or Voluntarily Dismiss, ECF No. 9, **IT IS ORDERED** the Report
21 and Recommendation, ECF No. 11, is **ADOPTED in its entirety**, and this action is
22 **DISMISSED with prejudice** for failure to state a claim upon which relief may be
23 granted under 28 U.S.C. §§ 1915A(b)(1) and 1915(e)(2).

24 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner who brings
25 three or more civil actions or appeals which are dismissed as frivolous or for failure to
26 state a claim will be precluded from bringing any other civil action or appeal *in forma*

1 *pauperis* “unless the prisoner is under imminent danger of serious physical injury.” 28
2 U.S.C. § 1915(g). **Plaintiff is advised to read the new statutory provisions under 28**
3 **U.S.C. § 1915. This dismissal of Plaintiff’s complaint may count as one of the three**
4 **dismissals allowed by 28 U.S.C. § 1915(g) and may adversely affect his ability to file**
5 **future claims.**

6 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
7 Order, enter judgment, forward copies to Plaintiff at his last known address, and close
8 the file. The District Court Executive is further directed to forward a copy of this Order
9 to the Office of the Attorney General of Washington, Criminal Justice Division. The
10 Court certifies any appeal of this dismissal would not be taken in good faith.

11 **DATED** this 17th day of September, 2013.

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13 *s/Lonny R. Suko*

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15 LONNY R. SUKO
16 UNITED STATES DISTRICT JUDGE
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